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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/320,637	05/26/1999	JOEL STERNHEIMER	3339-239A	5047

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ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER

MARTINELL, JAMES

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 04/16/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/320,637

Applicant(s)

STERNHEIMER, JOEL

Examiner

James Martinell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1631.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not identify the city and either state or foreign country of residence of each inventor.  
The residence information may be provided on either on an application data sheet or supplemental oath or declaration.

The declaration under 37 CFR § 1.67(a) referred to by applicant in papers no: 9 and 13 is not in the file.

The disclosure is objected to because of the following informalities: "too" in claim 18 is a typographical error.

Appropriate correction is required.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are vague, indefinite, incomplete, and incomprehensible.

- (a) Claims 13, 16, 17, and 18 are incomplete because there is no antecedent basis for "said protein".
- (b) The recitation of "time series of quantum vibrations associated to its elongation" (claim 13) is vague and indefinite because there is no definition of the term in the application.

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- (c) The recitation of "minimizing the global harmonic . . . frequencies surrounding said initial frequency" (claim 13) is vague, indefinite, and incomprehensible.
- (d) The recitation of "the two synchronized frequencies" (claim 13) is incomplete because the phrase has no antecedent basis.
- (e) The recitation of "said initial frequency" (claim 13) is incomplete because the phrase has no antecedent basis.
- (f) The recitation of "transposing the resulting frequencies into the audible domain" (claim 13) is vague and indefinite because the term is not defined in the application.
- (g) The recitation of "the code relative . . . their central value taken as an origin" (claim 13) is vague and indefinite.
- (h) The recitation of "central value" (claims 13) is incomplete because the phrase has no antecedent basis.
- (i) The recitation of "similar sequences of notes and signatures" (claim 13) is vague and indefinite because the instant application does not disclose how to distinguish similar sequences of notes and signatures from dissimilar sequences of notes and signatures.
- (j) The recitation of "musical periods" is vague and indefinite because the term is not defined.
- (k) The recitation of "rectifying first collectively, then individually" (claim 13) is vague and indefinite because the term is not defined.
- (l) The recitation of "adjustment of phrasing to measure" (claim 13) is vague and indefinite because the term is not defined.
- (m) The recitation of "using a keyboard featuring a 'one key play' device" (claim 13) is vague and indefinite because it is not understood what is meant by the phrase.

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- (n) The recitation of "tone quality" (claim 13) is vague and indefinite because the term is not defined.
- (o) The recitation of determining the tone quality . . . harmonic structure of each" (claim 13) is vague and indefinite because the meaning of the passage is not understood.
- (p) The recitation of "the protein" (claim 13, line 24) is incomplete because there is no antecedent basis for the term.
- (q) The recitation of "using a properly adjusted instrument" (claims 14 and 15) is vague and indefinite. No sort of adjustment of instruments is taught in the application.
- (r) The recitation of "being associated to the following code" (claim 14) is vague and indefinite because the nature of the association is not disclosed.
- (s) The recitation of "specific to the epigenetic stimulation of protein biosynthesis, according to the chromatic tempered scale" is vague, indefinite, and incomprehensible.
- (t) The recitation of "SeC" (claims 14 and 15) is vague and indefinite because the term is undefined.
- (u) The recitation of "specific to the epigenetic inhibition . . . chromatic tempered scale" (claim 15) is vague, indefinite, and incomprehensible.
- (v) The recitation of "by symmetrization of the notes relatively to the central G within the chromatic tempered scale" (claim 15) is vague, indefinite, and incomprehensible.
- (w) The recitation of "further stabilizing said protein synthesis" (claim 16) is incomplete because there is no antecedent basis for the passage.
- (x) The recitation of "using a proper colored light transposition" (claim 16) is vague and indefinite because the term is not defined. The application does not disclose

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how to distinguish a proper colored light transposition from an improper colored light transposition.

- (y) The recitation of "the mature protein" (claim 16) is incomplete because there is no antecedent basis for the phrase.
- (z) The recitation of "transposing the quantum vibrations . . . denoting central values" (claim 16) is incomprehensible.
- (aa) Claims 16 and 17 are improper multiple dependent claims because claim 16 depends from both claims 13 and 14 not in the alternative.
- (bb) The recitation of "spatial positions of the colors . . . representation of said protein" (claim 17) is vague and indefinite and incomprehensible.
- (cc) The recitation of "systematically spotting" (claim 18) is vague and indefinite because it is not explained what is meant by the term.
- (dd) The recitation of "melodic similarities and counter-similarities" (claim 18) is vague and indefinite because the terms are not defined.
- (ee) The recitation of "protein sequences that are known and available in databanks" (claim 18) is vague and indefinite and incomplete. The application does not distinguish between known and unknown sequences (and who is to know the sequences). Additionally the phrase amounts to improper incorporation of essential subject matter by reference (see MPEP 608.01(p)).
- (ff) The recitation of "their" (claim 18) is incomplete because there are multiple possible antecedents for the term.
- (gg) The recitation of "those proteins" (claim 18) is incomplete because there are multiple possible antecedents for the term.
- (hh) The recitation of "so as to determine their metabolic agonists and antagonist with those proteins" (claim 18) is vague and indefinite because it is not known what is meant by the phrase.

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- (ii) The recitation of "by comparison with acoustic . . . effects have been observed (claim 18) is vague, indefinite, and incomprehensible.

Claims 13-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims contain New Matter. Applicant does not point to basis in the application as filed for each of the limitations in each of newly filed claims 13-18. In particular, applicants do not point to support for each of the items listed in items (a) – (ii) in the rejection hereinabove.

Claims 13-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Each of the points mentioned in the rejection hereinabove (items (a) – (ii)) is incorporated here. The invention is not described in such a way that one of skill in the art could understand and/or practice the invention. Applicant's arguments (paper no. 13, pages 10-11) are not convincing because applicant makes assertions regarding phases and pauses in translation without providing clear evidence of such phases and pauses.

Claims 13-18 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. This rejection is repeated for reasons already of record (e.g., Office action mailed May 25, 2001, pages 6-7). Applicant's arguments (paper no. 13, pages 4-6) and the Rule 132 declarations by Dr. Sternheimer filed January 31, 02 are not convincing. Annexes 7, 8, and 9 to the Rule 132 declaration (executed October 26, 2001) have been given no weight because they are not in the English language. Annex 10 is not mentioned in the declaration so its significance is not known. None of the points of either declaration establishes a phase or pattern of translation of specific mRNAs into polypeptides in a regular or phased pattern.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Martinell whose telephone number is (703) 308-0296. The fax phone number for

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Examiner Martinell's desktop workstation is (703) 746-5162. The examiner works a flexible schedule and can be reached by phone and voice mail. Alternatively, a request for a return telephone call may be e-mailed to [james.martinell@uspto.gov](mailto:james.martinell@uspto.gov). Since e-mail communications may not be secure, it is suggested that information in such requests be limited to name, phone number, and the best time to return the call.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (703) 305-4028. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
JAMES MARTINELL, Ph.D.  
SENIOR LEVEL EXAMINER